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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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STATE OF NEW YORK,

Plaintiff,

No. C 06-6436 PJH

v.

MICRON TECHNOLOGY, INC., et al.,

Defendants.

**ORDER DENYING MOTION FOR
JUDGMENT ON THE PLEADINGS;
GRANTING REQUEST TO
RE-OPEN DISCOVERY**

Before the court is State of New York's ("plaintiff") motion for partial judgment on the pleadings with respect to certain affirmative defenses asserted by defendants pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. Alternatively, plaintiff requests leave to conduct discovery with respect to the challenged affirmative defenses. Defendants oppose the motion. Plaintiff's motion came on for hearing before this court on December 17, 2008. Plaintiff appeared through its counsel, Jeremy R. Kasha. Defendants appeared through defendants Hynix Semiconductor Inc. and Hynix Semiconductor America Inc.'s counsel, Steven H. Bergman. Having carefully read the parties' papers and considered the relevant legal authority, the court hereby DENIES plaintiff's motion for judgment on the pleadings and GRANTS plaintiff's request to re-open discovery, for the reasons stated below.

BACKGROUND

A. Procedural History

Plaintiff filed its original complaint against defendants on July 13, 2006. The original complaint asserted four causes of action against defendants: (1) a federal antitrust claim for violation of Section 1 of the Sherman Act; (2) a state antitrust claim for violation of New York's Donnelly Act; (3) a claim pursuant to New York's Executive Law § 63(12), which allows the State Attorney General to enjoin "fraudulent or illegal acts" in the "carrying on,

1 conducting or transaction of business"; and (4) a claim pursuant to California's state
2 antitrust statute, the Cartwright Act. See, e.g., Compl. ¶¶ 81-86, 87-92, 93-95, 96-101.

3 Defendants' first motion to dismiss portions of that complaint was heard by the court
4 on February 7, 2007. Fact discovery closed on July 16, 2007. On August 31, 2007, the
5 court granted defendants' motion to dismiss in part, and denied it in part with leave to
6 amend. On October 1, 2007, plaintiff duly filed its amended complaint. The amended
7 complaint once again asserted four causes of action, albeit slightly different ones than
8 before: (1) a federal antitrust claim under the Sherman Act; (2) a state antitrust claim under
9 New York's Donnelly Act; (3) a second state antitrust claim under New York's Donnelly Act;
10 and (4) a claim under New York's Executive Law § 63(12). See generally Amended
11 Complaint ("Amended Complaint"). In its Amended Complaint, New York attempted to
12 "clarify" its Sherman Act claim by alleging that it was seeking redress for purchases made
13 by non-state entities based on the OEMs' direct assignments of those rights to the state
14 under the Centralized Contract, rather than the non-state entities' direct assignments to the
15 state. The court found, however, that the "clarification" in reality amounted to an alteration
16 that materially changed the premise for the Sherman Act claim.

17 On November 26, 2007, defendants again moved to dismiss, challenging all four
18 claims, either in whole or in part. The court subsequently denied defendants' motion in all
19 respects in an order issued on April 15, 2008. The court also ordered discovery re-opened,
20 for the limited purpose of allowing defendants to discover the necessary information
21 regarding plaintiff State's new assignment theory, including the exact identity of any and all
22 relevant contracts pursuant to which plaintiff State asserts a contractually assigned claim,
23 the identity of any State and Non-State Entities subject to those contracts, and the details
24 of all relevant transactions executed pursuant to such contracts.

25 On May 13, 2008, each defendant filed an answer to the complaint. On October 3,
26 2008, plaintiff filed a motion for partial judgment on the pleadings pursuant to Rule 12(c),
27 seeking judgment on the pleadings with respect to 90 of the 317 affirmative defenses
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1 asserted by defendants in their answers to the amended complaint. Alternatively, plaintiff
2 requests leave to conduct discovery concerning these affirmative defenses. Defendants
3 filed an opposition on October 15, 2008.

4 **DISCUSSION**

5 Plaintiff argues that judgment on the pleadings is warranted with respect to 90 of the
6 317 affirmative defenses asserted by defendants on the basis that each of these defenses
7 fails to satisfy the minimum standards of specificity required by Rule 8; namely, facts
8 providing "fair notice" of the factual and legal bases of the particular defenses asserted.
9 Alternatively, plaintiff requests leave to conduct discovery concerning these affirmative
10 defenses on the basis that it is entitled to fair notice of the defenses defendants are
11 asserting in this action. Plaintiff contends that "but for" the fact that defendants filed several
12 motions to dismiss, and then served their answers after the close of fact discovery, plaintiff
13 would have been able to conduct discovery on these defenses in preparation for summary
14 judgment and/or trial. Plaintiff maintains that it will suffer prejudice if it is unable to conduct
15 discovery into defendants' affirmative defenses because defendants will be able to "keep
16 secret until trial their information, if any, as to the challenged defenses."

17 A. Motion for Judgment on the Pleadings

18 1. Legal Standard

19 The court sets forth at some length the legal standards that it applies to this motion
20 as it is not altogether clear what relief plaintiff seeks or the legal basis for such relief as
21 plaintiff uses the terms judgment on the pleadings, dismissal and striking almost
22 interchangeably.

23 Under Rule 12(c) of the Federal Rules of Civil Procedure, "[a]fter the pleadings are
24 closed but within such time as not to delay trial, any party may move for judgment on the
25 pleadings." A motion for judgment on the pleadings pursuant to Rule 12(c) challenges the
26 legal sufficiency of the opposing party's pleadings. Westlands Water Dist. v. Bureau of
27 Reclamation, 805 F.Supp. 1503, 1506 (E.D. Cal. 1992). The legal standard applied to a
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1 motion for judgment on the pleadings is the same as the legal standard applied on a motion
2 to dismiss pursuant to Rule 12(b)(6). Quest Communications Corp. v. City of Berkeley, 208
3 F.R.D. 288, 291 (N.D. Cal. 2002). To survive a motion to dismiss for failure to state a
4 claim, a complaint generally must satisfy only the minimal notice pleading requirements of
5 Federal Rule of Civil Procedure 8, which requires that the complaint include a “short and
6 plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P.
7 8(a)(2). Specific facts are unnecessary - the statement need only give the defendant “fair
8 notice of the claim and the grounds upon which it rests.” Erickson v. Pardus, 127 S.Ct.
9 2197, 2200 (2007) (citing Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1964-65 (2007));
10 see also Enron Oil Trading & Transp. Co. v. Walbrook Ins. Co., Ltd., 132 F.3d 526, 529 (9th
11 Cir. 1997) (under Rule 8(a) a plaintiff is not required to allege in its complaint the
12 evidentiary facts in support of its theory of recovery).

13 While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need
14 detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement
15 to relief requires more than labels and conclusions, and a formulaic recitation of the
16 elements of a cause of action will not do. Bell Atlantic, 127 S.Ct. at 1964-65. The “factual
17 allegations must be enough to raise a right to relief above the speculative level.” Id. at
18 1965. Dismissal is not appropriate where enough facts have been alleged “to state a claim
19 to relief that is plausible on its face.” Bell Atlantic, 127 S.Ct. at 1974. However, dismissal is
20 appropriate where a plaintiff has not “nudged [his or her] claims across the line from
21 conceivable to plausible.” Id.

22 “A motion for judgment on the pleadings is proper ‘when the moving party clearly
23 establishes on the face of the pleadings that no material issue of fact remains to be
24 resolved and that it is entitled to judgment as a matter of law.’ ” Jackson v. East Bay Hosp.,
25 980 F.Supp. 1341, 1345 (N.D. Cal. 1997) (citing Fed.R.Civ.P. 12(c)); Hal Roach Studios,
26 Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9th Cir. 1990). “In reviewing a motion
27 under Rule 12(c), the court must assume that the facts alleged by the nonmoving party are
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1 true and must construe all inferences drawn from those facts in favor of the nonmoving
2 party." Jackson, 980 F.Supp. at 1345 (citing General Conference Corp. of Seventh-Day
3 Adventists v. Seventh-Day Adventist Congregational Church, 887 F.2d 228, 230 (9th Cir.
4 1989)).

5 Judgment on the pleadings is appropriate when, even if all material facts in the
6 pleading under attack are true, the moving party is entitled to judgment as a matter of law.
7 Hal Roach Studios, 896 F.2d at 1550. A plaintiff is not entitled to judgment on the
8 pleadings if the answer raises issues of fact or an affirmative defense which, if proved,
9 would defeat plaintiff's recovery. General Conference Corp. of Seventh-Day Adventists,
10 887 F.2d at 230. While Rule 12(c) does not expressly provide for partial judgment on the
11 pleadings, neither does it bar such a procedure. See Savage v. Council on
12 American-Islamic Relations, Inc., 2008 WL 2951281, *2 (N.D. Cal. 2008) (Although Rule
13 12(c) neither specifically authorizes nor prohibits motions for judgment on the pleadings
14 directed to less than the entire complaint or answer it is the practice of many judges to
15 permit partial judgment on the pleadings (e.g. on the first claim for relief, or the third
16 affirmative defense) (citing William W. Schwarzer, A. Wallace Tashima & James M.
17 Wagstaffe, Federal Civil Procedure Before Trial, ¶ 9:340 (2001)) (quotation marks omitted)).

18 Additionally, under Rule 12(f) a court, upon motion or sua sponte, may strike "from
19 any pleading any insufficient defense or any redundant, immaterial, impertinent, or
20 scandalous matter." "To strike an affirmative defense, the moving party must convince the
21 court 'that there are no questions of fact, that any questions of law are clear and not in
22 dispute, and that under no set of circumstances could the defense succeed.' " S.E.C. v.
23 Sands, 902 F.Supp. 1149, 1165 (C.D. Cal. 1995). A defense is ordinarily not held to be
24 insufficient "unless it appears to a certainty that plaintiffs would succeed despite any state
25 of the facts which could be proved in support of the defense, and are inferable from the
26 pleadings." Williams v. Jader Fuel Co., 944 F.2d 1388, 1400 (7th Cir. 1991). A defense is
27 also insufficient if it does not provide the plaintiff with "fair notice" of the defense. Wyshak
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1 v. City Nat. Bank, 607 F.2d 824, 827 (9th Cir. 1979) (“The key to determining the
2 sufficiency of pleading an affirmative defense is whether it gives plaintiff fair notice of the
3 defense.”).

4 Unless the defense is one that falls under Rule 9, there is no requirement that a
5 party plead an affirmative defense with particular specificity. Wong v. U.S., 373 F.3d 952,
6 969 (9th Cir. 2004). Thus, in some cases, simply pleading the name of the affirmative
7 defense is sufficient. See Woodfield v. Nationwide Mutual Ins. Co., 193 F.3d 354, 362 (5th
8 Cir. 1999). Other affirmative defenses, however, require greater specificity. See id. (baldly
9 “naming” the broad affirmative defense of “waiver and/or release” falls well short of the
10 minimum particulars needed to identify the affirmative defense and provide “fair notice”).
11 “The ‘fair notice’ pleading requirement is met if the defendant ‘sufficiently articulated the
12 defense so that the plaintiff was not a victim of unfair surprise.’ ” Id. Deciding whether the
13 plaintiff was unfairly surprised involves a fact-specific analysis. Id.

14 The function of a Rule 12(f) motion to strike is to avoid the expenditure of time and
15 money that will arise from litigating spurious issues by dispensing with those issues prior to
16 trial. Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983). Motions to
17 strike should not be granted unless it is clear that the matter to be stricken could have no
18 possible bearing on the subject matter of the litigation. Colaprico v. Sun Microsystems,
19 Inc., 758 F.Supp. 1335, 1339 (N.D. Cal. 1991); see also Wright & Miller, Federal Practice
20 and Procedure: Civil 3d § 1381 (“Motions to strike a defense as insufficient are not favored
21 . . . because of their somewhat dilatory and often harassing character. Thus, even when
22 technically appropriate and well-founded, Rule 12(f) motions often are not granted in the
23 absence of a showing of prejudice to the moving party.”); Augustus v. Board of Public
24 Instruction of Escambia County, Florida, 306 F.2d 862, 868 (5th Cir. 1962). A decision to
25 strike material from the pleadings is vested to the sound discretion of the trial court. Nurse
26 v. United States, 226 F.3d 996, 1000 (9th Cir. 2000).

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1 2. Analysis

2 Defendants argue that plaintiff's motion for judgment on the pleadings fails for three
3 reasons: (1) plaintiff failed to meet its burden under Rule 12(c) to demonstrate that, even
4 assuming the truth of the allegations in the answers, the challenged affirmative defenses
5 fail as a matter of law; (2) the affirmative defenses are plead with sufficient specificity to
6 provide plaintiff fair notice of the defense being advanced, given the language of the
7 defenses and plaintiff's knowledge of the lawsuit's factual and legal context; and (3) plaintiff
8 violated Civil Local Rules 7-2(b)(3) and 7-4(a) by failing to articulate a specific argument as
9 to each of the affirmative defenses it challenges.

10 Plaintiff is the party moving for judgment on the pleadings. Therefore, any facts
11 alleged by defendants must be taken as true and all inferences must be drawn in their
12 favor. Further, under Rule 12(c), plaintiff has the burden to "clearly establish" on the face
13 of the pleadings that no material issue of fact remains to be resolved and that plaintiff is
14 entitled to judgment as a matter of law. Because plaintiff has utterly failed to do this, the
15 court concludes that judgment on the pleadings in favor of plaintiff is inappropriate.
16 Accordingly, the motion is DENIED.

17 In addition, even assuming for the sake of argument that plaintiff's motion can
18 properly be construed as a motion to strike pursuant to Rule 12(f), the court finds that
19 plaintiff's motion is insufficient because it fails to set forth reasoned argument justifying why
20 each particular affirmative defense it challenges is legally insufficient. Instead, plaintiff has
21 simply created a list of affirmative defenses it claims are legally insufficient (Schwartz Decl.,
22 Exh. J) and then asserts, in a conclusory fashion, that each of these defenses fail because
23 they lack sufficient factual specificity to provide "fair notice" of the basis for the defense.
24 The court declines to rule on plaintiff's objections without the benefit of any argument from
25 plaintiff. However, with regard to the twenty-one affirmative defenses for which plaintiff
26 provided argument, the court finds several of plaintiff's arguments to be well-taken, at least
27 with respect to the defenses which simply state a legal conclusion or theory without the
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1 support of any facts explaining how it applies to the instant case. Nevertheless, because
2 the court agrees with defendants that plaintiff's motion, in essence, is a motion to re-open
3 discovery, the court will treat the motion as such. Moreover, the court is of the opinion that
4 plaintiff's concerns regarding defendants' affirmative defenses can be more efficiently
5 resolved through discovery rather than motion practice.

6 B. Plaintiff's Request to Re-Open Discovery

7 Defendants argue that plaintiff's request to re-open discovery should be denied on
8 the basis that plaintiff has failed to demonstrate good cause to justify such a request under
9 Rule 16. Specifically, defendants argue that good cause does not exist to re-open
10 discovery because plaintiff was on notice of the affirmative defenses defendants were likely
11 to assert insofar as: (1) plaintiff had access to defendants' answers filed in an earlier
12 related action before the close of discovery in this case; and (2) issues relating to
13 affirmative defenses unique to this action were raised in defendants' first motion to dismiss
14 and in discovery. In addition, defendants argue that discovery should not be re-opened
15 because plaintiff failed to preserve its right to seek discovery on the affirmative defenses by
16 failing to raise this issue earlier.

17 Rule 16 of the Federal Rules of Civil Procedure governs deadlines and dates set by
18 the court. In the absence of good cause, the court will not modify the scheduling order.
19 See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 608 (9th Cir. 1992). The
20 inquiry under Rule 16(b)'s good cause standard first focuses on the diligence of the party
21 seeking the amendment. "The district court may modify the pretrial schedule 'if it cannot
22 reasonably be met despite the diligence of the party seeking the extension.' " Id. at 609.
23 "Moreover, carelessness is not compatible with a finding of diligence and offers no reason
24 for a grant of relief." Id. "Although the existence or degree of prejudice to the party
25 opposing the modification might supply additional reasons to deny a motion, the focus of
26 the inquiry is upon the moving party's reasons for seeking modification. If that party was
27 not diligent, the inquiry should end." Id. (citation omitted).

1 "In evaluating a motion to amend the pretrial order, a district court should consider
2 four factors: (1) the degree of prejudice or surprise to the [non-moving party] if the order is
3 modified; (2) the ability of the [non-moving party] to cure the prejudice; (3) any impact of
4 modification on the orderly and efficient conduct of the trial; and (4) any willfulness or bad
5 faith by the party seeking modification." Galdamez v. Potter, 415 F.3d 1015, 1020 (9th
6 Cir.2005) (citing Byrd v. Guess, 137 F.3d 1126, 1132 (9th Cir.1998)).

7 Under the court's scheduling order, discovery closed in this matter on July 17, 2007.
8 However, defendants did not file their answers until May 13, 2008. Plaintiff filed the instant
9 motion requesting leave to conduct discovery on certain of defendants' affirmative defenses
10 on September 15, 2008. In its motion, plaintiff asserts that it will suffer prejudice if it is
11 unable to conduct discovery on these defenses because it will be unable to adequately
12 prepare for these defenses at the summary judgment stage or at trial. The court agrees.
13 Prohibiting plaintiff from conducting discovery on these defenses will clearly place plaintiff
14 at an unfair disadvantage because plaintiff will be unable to explore the factual and legal
15 bases of these defenses, which in turn will significantly impair plaintiff's ability to prepare to
16 rebut or defend against these defenses in dispositive motions or at trial. In addition, it is
17 clear that plaintiff could not have conducted discovery on these defenses before the
18 discovery cut-off date given that defendants answers were not filed until after the
19 discovery-cut off date. While plaintiff did wait over four months to file this motion after
20 defendants filed their answers, the court nonetheless does not find that this delay is
21 unreasonable or prejudicial to defendants. Four months does not amount to significant
22 delay under the circumstances, particularly given that, according to plaintiff, during this time
23 period it attempted to resolve its concerns regarding the affirmative defenses with opposing
24 counsel on an informal basis.

25 Moreover, the court finds that defendants, for their part, have not persuasively
26 articulated any prejudice they would suffer if discovery was re-opened. Nor have
27 defendants shown any willfulness or bad faith on the part of plaintiff in seeking to re-open
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1 discovery or that re-opening discovering would disrupt the orderly and efficient resolution of
2 this case. In fact, the court anticipates that further discovery will narrow the issues for trial,
3 and therefore serve the interests of judicial economy.

4 The court finds entirely unpersuasive defendants' argument that plaintiff should not
5 be permitted to conduct discovery on their affirmative defenses because plaintiff was on
6 notice of these defenses from related earlier-filed litigation and from the discovery already
7 propounded in this action. Plaintiff is not required or expected to speculate as to which
8 defenses defendants will assert or to assume that any affirmative defense will be asserted
9 at all. Defendants offered neither persuasive argument nor citation to controlling authority
10 in support of any such requirement. Additionally, to the extent defendants argue that
11 plaintiff should not be permitted to conduct discovery on their affirmative defenses because
12 plaintiff failed to preserve its right to conduct such discovery before the discovery cut-off
13 date, the court finds this argument similarly unpersuasive. Plaintiff did not neglect to
14 conduct discovery after the defenses were asserted, but rather waited until they were
15 asserted to seek discovery. Because of the motions to dismiss that defendants chose to
16 file and the amount of time that it took the court to adjudicate those motions, it so happened
17 that the discovery period had passed, through no fault of plaintiff, before the need to take
18 discovery arose. Under the circumstances, plaintiff cannot be said to have waived its right
19 to discovery.

20 At the hearing, the court indicated a tentative resolution of this dispute. However,
21 upon further reflection the court has decided on a different approach. As defendants aptly
22 noted, this is in essence a request to re-open discovery and not a proper motion for
23 judgment on the pleadings or motion to strike. For some reason, plaintiff chose to request
24 in its papers to take discovery only on those 90 challenged defenses on which the court did
25 not grant judgment or dismiss or strike. At the hearing, plaintiff argued that it was entitled
26 to discovery as well on any dismissed or stricken affirmative defenses for which the court
27 might grant leave to amend. Plaintiff also seemed to suggest at the hearing that it was also
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1 entitled to discovery on other affirmative defenses that it had not challenged or even
2 identified. Notwithstanding the convoluted way in which plaintiff has framed and presented
3 this issue, it is really quite simple. Is plaintiff entitled to discovery on the affirmative
4 defenses raised by defendants? Of course it is. However, given the four months it took
5 plaintiff to bring this motion after notice of the affirmative defenses, during which it
6 attempted to resolve its concerns informally, the court assumes that plaintiff's remaining
7 concerns are with respect to the 90 challenged defenses identified in this motion.
8 Accordingly, the court's order is limited to those specifically identified and challenged
9 affirmative defenses, and no discovery will be permitted on the others.

10 Thus, the court orders as follows. First defendants shall, within 30 days, review,
11 evaluate and dismiss any affirmative defenses that are truly unnecessary and amend any
12 that clearly do not provide an adequate factual basis. A meet and confer session shall
13 follow within 14 days. Then plaintiff shall be permitted 90 days to take discovery on the
14 remaining challenged affirmative defenses that require discovery. Within 30 days after
15 discovery is completed, the parties shall meet and confer once again and try to resolve any
16 remaining disputes. Any unresolved discovery disputes about the affirmative defenses
17 should be brought to the attention of Magistrate Judge Spero. The court expects that full
18 discovery will eliminate the need for any additional motion practice with respect to the
19 affirmative defenses and further expects to revisit them only in the context of a motion for
20 summary judgment.

21 **CONCLUSION**

22 For the reasons stated above, the court hereby DENIES plaintiff's motion for
23 judgment on the pleadings, but GRANTS plaintiff's request to re-open discovery.

24 **IT IS SO ORDERED.**

25 Dated: January 5, 2009


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PHYLLIS J. HAMILTON
27 United States District Judge
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